

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No.: 8:03-CR-77-T-30TBM**

**HATEM NAJI FARIZ**

**MOTION TO ADOPT SAMI AL-ARIAN'S MOTION TO EXCLUDE THE  
GOVERNMENT'S PURPORTED "EXPERT" TESTIMONY OF  
SPECIAL AGENT KERRY MYERS**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, moves this Honorable Court to permit him to adopt co-defendant Sami Al-Arian's Motion to Exclude the Government's Purported "Expert" Testimony of Special Agent Kerry Myers and Incorporated Memorandum of Law (Doc. 1152), the same as if the motion and memorandum of law were fully set out, filed, and produced on behalf of Mr. Fariz.

The purpose of this motion to adopt is to provide Mr. Fariz the benefit of this motion and memorandum without burdening the Court or the record with unnecessary repetition.

Mr. Fariz would respectfully add the following points for the Court's consideration of Dr. Al-Arian's motion. Building on the arguments Dr. Al-Arian makes in his motion on pages 9-12, Mr. Fariz notes that in the Eleventh Circuit, an expert cannot tell the jury what factual result it should reach, since that would constitute inadmissible testimony. Fed. R. Evid. 704 advisory committee notes; *Montgomery v. Aetna Cas. & Surety Co.*, 898 F.2d 1537, 1541 (11<sup>th</sup> Cir. 1990) ("An expert may not, however, merely tell the jury what result to reach. . . A witness also may not testify to the legal implications of conduct; the court must

be the jury's only source of law"); *Haney v. Mizell Memorial Hospital*, 744 F.2d 1467, 1474 n.8 (11<sup>th</sup> Cir. 1984).<sup>1</sup> Further, it appears as if Special Agent Myers will attempt to testify as to communications that took place in the Arabic language, which, upon information and belief, he does not speak or understand. It is therefore not clear how he is qualified to express an opinion on communications in a foreign language that he needs the benefit of an interpreter to understand.

WHEREFORE Defendant Hatem Naji Fariz respectfully requests that this Court allow him to adopt co-defendant Sami Al-Arian's Motion to Exclude the Government's Purported "Expert" Testimony of Special Agent Kerry Myers and Incorporated Memorandum of Law (Doc. 1152).

Respectfully submitted,

R. FLETCHER PEACOCK  
FEDERAL PUBLIC DEFENDER

/s/ Wadie E. Said  
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<sup>1</sup>*See also United States v. Welch*, No. 02-13917-II, slip. op. at 17-18 (11<sup>th</sup> Cir. Aug. 29, 2003) (attached as Exhibit A).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5th day of June, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; Alexis L. Collins, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ Wadie E. Said  
Wadie E. Said  
Assistant Federal Public Defender